

PROB. 12B
(7/93)

ORIGINAL

United States District Court

for the

DISTRICT OF HAWAII

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAN 06 2006

at 3 o'clock and 10 min. M
JAN 06 2006
J. BEITIA, CLERK

Name of Offender: BRIAN M. KANESHIRO Case Number: CR 01-00456HG-01

Name of Sentencing Judicial Officer: The Honorable Helen Gillmor
U.S. District Judge

Date of Original Sentence: 4/15/2002

Original Offense: Count 1: Bank Embezzlement, in violation of 18 U.S.C. § 656, a
Class B felony

Count 2: Criminal Forfeiture, in violation of 18 U.S.C. § 982

Original Sentence: Twenty-eight (28) months of imprisonment as to Count 1 of the Information, followed by five (5) years of supervised release as to Count 1 of the Information. The following special conditions were also ordered: 1) That the defendant is prohibited from possessing any illegal or dangerous weapons; 2) That the defendant participate in a mental health program, to include gambling addiction treatment services, at the discretion and direction of the Probation Office; 3) That the defendant shall provide the Probation Office and the Financial Litigation Unit of the U.S. Attorney's Office access to any requested financial information to include submitting to periodic debtor's examinations as directed by the Probation Office; 4) That the defendant is prohibited from engaging in gambling or games of chance or using the Internet for this purpose; and 5) That the restitution of \$714,713.18 is due immediately to the Bank of Hawaii, and any remaining balance upon release from confinement be paid during the period of supervision on an installment basis according to the collection policy of the Probation Office but at a rate of not less than 10 percent of his monthly gross income. Interest, if applicable in this case, is waived while the defendant is serving his term of imprisonment and shall commence to accrue on any remaining balance upon his release on supervision.

Type of Supervision: Supervised Release Date Supervision Commenced: 6/8/2004

PETITIONING THE COURT

[✓] To modify the conditions of supervision as follows:

- 6) *That the defendant is prohibited from incurring credit charges and lines of credit without the approval of the Probation Office.*

CAUSE

While imprisoned, the offender participated in the Bureau of Prison's Inmate Financial Responsibility Program and made monthly payments toward his restitution. Additionally, upon his release for supervised release on 6/8/2004, the offender immediately secured employment and continued with his monthly restitution payments in accordance with the collection policy of the Probation Office.

However, the offender failed to make restitution payments for the months of September and October 2005. Specifically, the offender failed to pay \$320.00 in October 2005 for his income earned in September 2005, and failed to pay \$386.21 in November 2005 for his income earned in October 2005. Additionally, the offender has not yet made his restitution payment for November 2005 which is due by the end of December 2005.

On 12/7/2005, this officer telephonically contacted the offender concerning his delinquent restitution status. The offender apologized for not paying his restitution as required. Upon questioning, the offender reported that he did not pay restitution in October and November 2005 because his work hours had decreased and he spent more money "going out" than he had expected. In this regard, the offender reported that because he assisted a local high school football team during this past fall season, his work hours decreased. This officer advised the offender that he was in violation of his supervision for willful nonpayment of restitution. In this regard, despite earning income in the months of September and October 2005, the offender did not make payments toward his restitution. This officer subsequently instructed the offender to pay his September and October 2005 arrearage, as well as his November 2005 restitution payment by the end of December 2005. The offender acknowledged the violation and reported that he would make all necessary payments as instructed.

In light of the violation, the amount of outstanding restitution, and the offender's admission that he willfully did not pay restitution for the months of September and October 2005, we respectfully recommend that the Court modify the special conditions to include the above-listed special condition to address the offender's violation.

This officer notes that the offender resides with his parents in Pearl City and is employed as a food server for Monterey Bay Cannery and California Pizza Kitchen. Additionally, the offender attends Gamblers Anonymous twice monthly and has had no

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reported law enforcement contact since his release. Further, the offender's current restitution balance including interest is \$729,937.81 (as of 12/7/2005).

Please be advised the offender is entitled to a hearing and counsel before this new condition is imposed. However, a signed Waiver of Hearing to Modify Conditions of Probation/Supervised Release is attached. The offender waives his right to a hearing and to assistance of counsel. He further agrees to the modification of the conditions of supervision. The U.S. Attorney's Office and the offender's counsel have been notified of the proposed modification and have no objections.

Respectfully submitted by,



DEREK M. KIM
Senior U.S. Probation Officer

Approved by:



GENE DeMELLO, JR.
Supervising U.S. Probation Officer

Date: 12/29/2005

THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above
☐ Other



HELEN GILLMOR
Chief U.S. District Judge

1.5.06
Date

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

- ☐ To extend the term of supervision for years, for a total term of years.
☒ To modify the conditions of supervision as follows:

- 6) *That the defendant is prohibited from incurring credit charges and lines of credit without the approval of the Probation Office.*

Witness:


DEREK M. KIM
Senior U.S. Probation Officer

Signed:


BRIAN M. KANESHIRO
Supervised Releasee

12/19/05
Date